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LOS ANGELES MEMORIAL COLISEUM COMMISSION &
LOS ANGELES MEMORIAL COLISEUM ASSOCIATION

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Los Angeles Superior Court

FEB 14 2013

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES — CENTRAL DISTRICT

LOS ANGELES MEMORIAL COLISEUM
COMMISSION, a public entity organized and
operating under the Joint Exercise of
Powers Act, and LOS ANGELES MEMORIAL
COLISEUM ASSOCIATION, a California non-
profit public benefit corporation,

Plaintiffs,

v.

SINGERLEWAK, a California Limited
Liability Partnership; and DOES 1 through
100,

Defendants.

Case No.

BC501112

**COMPLAINT FOR DAMAGES FOR
NEGLIGENCE, GROSS NEGLIGENCE,
AND BREACH OF FIDUCIARY DUTY**

INTRODUCTION

1. This lawsuit concerns breaches of obligations to the Los Angeles Memorial Coliseum Commission ("the Commission") and the Los Angeles Memorial Coliseum Association ("the Association") (collectively, "Plaintiffs") committed by Defendant SingerLewak, LLP ("SingerLewak"), Plaintiffs' auditor and a firm of certified public accountants.

2. The Commission is a public entity governed by a nine-person Commission whose Commissioners are appointed by the County of Los Angeles, the City of Los Angeles, and the State of California. The Association is owned and controlled by the Commission and serves as a

1 vehicle to provide food and beverage and other services for the public who attend events at the
2 storied Los Angeles Memorial Coliseum and Sports Arena.

3 3. As detailed below, SingerLewak performed auditing and accounting services
4 during critical years for the Plaintiffs from 2007 through 2011. SingerLewak's auditing and
5 accounting services for the Plaintiffs were performed in a dilatory and grossly negligent fashion,
6 and in violation of auditing and accounting principles and standards, causing Plaintiffs to be
7 damaged in an amount in excess of \$11,000,000.

8 4. SingerLewak's obligations as an auditor performing audits in accordance with
9 generally accepted auditing standards require it to know its audit clients and their businesses, and
10 to plan audits and assess the financial risks to its clients in a professional manner designed to
11 obtain reasonable assurance as to whether the clients' financial statements are free of material
12 misstatement, whether caused by fraud or error.

13 5. In the engagement for the Plaintiffs, SingerLewak's audit planning and risk
14 assessment were incomplete and insufficient, and the accounting firm's use of substantive testing
15 procedures was inadequate. The firm could have and should have alerted the Plaintiffs to
16 material errors in their financial statements during each of the years 2007 through 2011, which in
17 isolation and in the aggregate would have caused the Plaintiffs to take different decisions in the
18 governance and oversight of the Plaintiffs' facilities, and would have caused the Plaintiffs to
19 discover the fraud being perpetrated upon them by corrupt former management employees and
20 complicit, corrupt promoters of events at the Los Angeles Memorial Coliseum and Sports Arena.

21 6. SingerLewak's incompetent auditing and accounting services effectively protected
22 the corrupt former employees and promoters. Its grossly insufficient management letters and
23 disclosures to the Commission and the Association, especially regarding the Plaintiffs' internal
24 control environment, left the Commissioners and the Association's Board under the control of the
25 corrupt former management employees for necessary information on the operations and events
26 affecting the Plaintiffs and their business activities.

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1 **PARTIES**

2 7. Plaintiff the Commission is a public entity organized and operating under the
3 California Joint Exercise of Powers Act, and is located and doing business in the County of Los
4 Angeles in the State of California.

5 8. Plaintiff the Association is a California non-profit public benefit corporation,
6 which was created by the Commission pursuant to the Joint Exercise of Powers Act, and is
7 controlled by and under the direction of the Commission. It is operated as a public entity, and is
8 located and doing business in the County of Los Angeles in the State of California.

9 9. Defendant SingerLewak is a California Limited Liability Partnership that is
10 located and doing business in the County of Los Angeles in the State of California.

11 10. Plaintiffs are unaware of the true names and capacities of the Defendants sued
12 herein as Does 1 through 100 and therefore sue these Defendants by such fictitious names.
13 Plaintiffs are informed and believe, and on that basis allege, that each of the fictitious Doe
14 Defendants is responsible in some manner for the damages suffered by the Plaintiffs, including,
15 without limitation, as partners of Defendant SingerLewak. Plaintiffs will amend this Complaint
16 to allege the true names and capacities of such fictitiously named Defendants when the same are
17 ascertained. References in this Complaint to the "Defendants" or to "SingerLewak" include
18 references to the named Defendant and Does 1 through 100 except where the context clearly
19 indicates otherwise.

20 11. Plaintiffs allege that, as to each cause of action with regard to the named and Doe
21 Defendants set forth therein, each of said Defendants at times acted together to cause injury or
22 harm to one or both of the Plaintiffs.

23 **VENUE AND JURISDICTION**

24 12. The accounting and auditing services that are the subject matter of this Complaint
25 were performed in the County of Los Angeles.

26 13. The Complaint involves damages in excess of \$25,000.

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GENERAL ALLEGATIONS

14. Beginning in 2007, Plaintiffs contracted for SingerLewak to provide certain auditing and accounting services concerning Plaintiffs' business and operations, including the auditing of fiscal year-end financial statements. SingerLewak knew Plaintiffs would be using and relying upon its auditing and accounting services, and intended Plaintiffs to rely on the services.

15. SingerLewak held itself out to the public as a firm of certified public accountants and auditors and otherwise represented to Plaintiffs that it possessed the requisite knowledge, skill, and expertise to perform the auditing and accounting services that Plaintiffs hired it to perform for them as public entities in the State of California.

16. SingerLewak audited Plaintiffs' year-end financial statements for Plaintiffs' fiscal years ending June 30, 2007, June 30, 2008, June 30, 2009, and June 30, 2010. SingerLewak staffed the audit team with young and inexperienced auditors. Further, Jeff Holt, SingerLewak's audit partner, who was responsible for, among other things, overseeing SingerLewak's work for Plaintiffs, performed his duties carelessly and without due regard for the effects of his errors and omissions.

17. SingerLewak began the audit of Plaintiffs' year-end financial statements for Plaintiffs' fiscal year ending June 30, 2011, but Plaintiffs directed SingerLewak to cease all of its work in late 2011 when certain errors and omissions described below were first discovered.

18. In or about November 2010, Plaintiffs received general allegations of fiscal misconduct allegedly engaged in by one or more now former members of the management team of the Plaintiffs. Plaintiffs conducted an investigation into the allegations, which revealed multiple acts of misconduct by former employees of Plaintiffs as well as by vendors that provided goods and services to Plaintiffs and by promoters of events that were held at Plaintiffs' facilities. Based on a further and extensive investigation thereafter, the combined acts of misconduct were found to have resulted in damage to Plaintiffs exceeding the sum of at least \$3,000,000.

19. Several of the acts of misconduct that were committed should have been identified by SingerLewak as part of performing an audit in accordance with generally accepted auditing standards ("GAAS"), which it was required to follow when it held itself and its partners out as

1 being certified public accountants. The misconduct should have then been reported to Plaintiffs,
2 as also required by GAAS, which would have substantially mitigated Plaintiffs' losses.

3 20. Among other things, SingerLewak failed to identify at least 44 instances of cash
4 payments made between December 31, 2007 and August 7, 2011 totaling more than \$965,000.00
5 to a union shop steward of the International Alliance of Theatrical Stage Employees Local 33
6 ("IATSE") in connection with events held at the Plaintiffs' public facilities. The purposes for
7 these cash payments are still being determined, but included, without limitation, wage payments
8 to the shop steward and stagehands that were outside the ordinary and usual employment
9 compensation practices of Plaintiffs. Some of the cash payments were made following
10 withdrawals from Plaintiffs' operating bank account for deliveries of cash by armored car service,
11 while other cash payments were made directly from the box office receipts of the Plaintiffs.

12 21. SingerLewak never noted the practice of cash payments for payroll purposes
13 during the years that it performed audits of the Plaintiffs even though it reviewed documents
14 including settlement statements for events that clearly show the practice was occurring, and never
15 informed the Commissioners of the practice, despite the fact that it purportedly verified amounts
16 and terms to settlement statements. The practice of paying cash wages resulted in the employees
17 not paying their federal and state taxes on the employees' wages and not paying approximately
18 twenty-nine percent (29%) in employee-related costs, resulting from non-payment of a payroll
19 handling fee, FICA and Medicare (7.65%), federal (0.90%) and state unemployment (3.50%)
20 taxes, and workers' compensation (15.51%). The practice exposed Plaintiffs to liability in an
21 amount in excess of fifty-eight percent (58%) more than the cash paid, as a result of the effect of
22 all payroll taxes, and federal and state withholding taxes, not including interest, penalties, and the
23 cost of reconstruction and filing of the Plaintiffs' federal and state tax returns. Plaintiffs are also
24 exposed to additional liability to the IATSE Local 33 Pension Fund, the IATSE Local 33 Health
25 & Welfare Fund, and the IATSE Local 33 401(k) Plan of twenty-one percent (21%) of the cash
26 payroll amounts paid because the union shop steward did not make the contributions to the trust
27 funds despite being paid with cash for that purpose. IATSE Local 33 also claims that Plaintiffs
28 are liable for union dues not withheld from wages and paid on behalf of union employees.

1 22. In addition, Plaintiffs discovered SingerLewak failed to perform its auditing and
2 accounting services in accordance with GAAS because it failed to identify numerous violations of
3 generally accepted accounting principles ("GAAP") and standards established by the
4 Governmental Accounting Standards Board ("GASB"). These violations included, but are not
5 limited to, the following, which a properly planned audit in accordance with GAAS should have
6 disclosed and required SingerLewak to timely disclose to Plaintiffs:

7 (a) First, SingerLewak failed to identify material, deferred rent
8 liabilities for two ground leases as required by GASB standards. SingerLewak evaluated
9 the provisions of the subject ground leases but failed to advise Plaintiffs that the failure to
10 use the straight line depreciation method is a GAAP error. The error led to Plaintiffs'
11 expenses being understated by \$268,299.

12 (b) Second, the financial statements audited by SingerLewak for
13 Plaintiffs failed to record a material liability for the amount of unpaid, required
14 contributions for Plaintiffs' retiree medical plan as required by GASB standards.
15 SingerLewak's error led to a belated recognition of unpaid, but required contributions of
16 approximately \$439,000 and an understated expense of \$536,000.

17 (c) Third, the financial statements audited by SingerLewak reflected
18 deposits in the approximate amount of \$870,000 for which there was no reasonable
19 expectation that they would be realized. SingerLewak, although aware of the facts, did
20 not take appropriate steps to determine the basis for not writing off the amount under
21 GAAP.

22 (d) Fourth, the financial statements audited by SingerLewak reflected
23 certain property and equipment valued in excess of \$500,000 as capital assets when the
24 items should have been recorded as expenses. SingerLewak was aware of Plaintiffs'
25 capitalization policies, but did not confirm that they were followed. That error, together
26 with the failure to test the actual physical existence of fixed assets, led to fixed assets
27 being overstated and expenses understated in the amount of \$578,200.

1 23. SingerLewak's failure to perform adequate audits in accordance with GAAS
2 resulted in material errors and omissions in Plaintiffs' financial activities and position, which in
3 turn resulted in Plaintiffs (1) placing inappropriate reliance on such financial information based
4 on their reasonable expectation that audits performed by SingerLewak were consistent with due
5 professional care in accordance with professional standards and GAAS, and (2) making capital
6 commitments and improvements and other expenditures that they would not have made had they
7 been aware of the true state of their financial affairs, including, but not limited to, capital
8 improvements stated in Section 13.1 and Exhibit F of the May 14, 2008 Lease Agreement
9 between the Commission and the University of Southern California, most significantly the
10 purchase of a state of the art video board (and, consequently, new sound system cabinets and
11 additional sound system equipment) at a cost of more than \$6.7 million. Plaintiffs' reliance on
12 SingerLewak's audits, causing in turn Plaintiffs' misperceived financial position, also materially
13 and substantially affected Plaintiffs' negotiations with the University of Southern California
14 concerning the 2008 lease. Had Plaintiffs' known the true state of their financial affairs, Plaintiffs
15 would not have agreed to certain terms and provisions contained in the USC lease agreement.

16 24. In addition, as Plaintiffs' auditor, SingerLewak was required to assess internal
17 controls as part of planning its audits and establishing adequate testing procedures and should
18 have been intimately familiar with the gathering of information that formed the bases of
19 Plaintiffs' financial statements as well as the internal controls that were put in place to ensure that
20 the information was accurate and reliable. Indeed, GAAS requires an auditor to gain an
21 understanding of internal controls sufficient to assess the risk of a material misstatement,
22 including a material misstatement due to fraud. SingerLewak was in the unique position to
23 assess, and was expected to assess in accordance with GAAS, the quality of information it was
24 given to audit, the adequacy of support for Plaintiffs' financial statements, and what internal
25 controls should have been in place to ensure the accuracy and reliability of that information. The
26 assessment of Plaintiffs' internal controls performed by SingerLewak in connection with its audit
27 of Plaintiffs' financial statements for their fiscal year ending June 30, 2007 did not comport with
28 GAAS. Worse yet, SingerLewak did not perform an assessment of Plaintiffs' internal controls in

1 connection with its audits of Plaintiffs' financial statements for their fiscal years ending June 30,
2 2008, June 30, 2009, and June 30, 2010 or even update its understanding of the internal controls
3 in place in 2007.

4 25. In direct contravention of customs, standards, and practices that are typical in the
5 practice of auditing and accounting, SingerLewak failed to notify Plaintiffs of the following lack
6 of internal controls, among others, over the information that made up Plaintiffs' financial
7 statements:

8 (a) There was improper segregation of duties in Plaintiffs' accounting
9 department;

10 (b) There was no requirement that events held at Plaintiffs' facilities
11 that were expected to generate significant revenue be reviewed or approved by Plaintiffs'
12 governing body;

13 (c) There were no formal processes for authorizing vendors that
14 provided materials or services to Plaintiffs;

15 (d) There was no system for taking periodic inventory or tracking of
16 individual property or equipment;

17 (e) There was no formal pricing policy for events held at Plaintiffs'
18 facilities;

19 (f) There was no check on the Plaintiffs' former management's
20 significant authority to issue bonuses and over the amount of bonuses to issue; and

21 (g) There were no formal processes in place (including, among other
22 things, a code of conduct to which Plaintiffs' employees agreed to abide) to identify
23 whether Plaintiffs' former managers were practicing sound integrity and ethical values.

24 26. SingerLewak consistently rated control risk as low for the Plaintiffs, despite the
25 obvious deficiencies. Although SingerLewak will argue today that the former management
26 employees must have lied to the accounting firm, or that the Commission should have discovered
27 any corrupt activity affecting the operations or should not have trusted the former employees, the
28 fact is that SingerLewak's failure to understand, appreciate or bring to the Plaintiffs' attention the

1 material issues involved in the internal control environment left the Commission and Association,
2 and their governing bodies, vulnerable to fraud, theft, misuse of assets, diversion of revenue, and
3 conflicts of interest.

4 27. Because SingerLewak failed to communicate to Plaintiffs material failures in
5 internal control, and because it did not modify its audit opinion as required by GAAS when such
6 failures led to materially misstated financial information, Plaintiffs reasonably relied upon their
7 "clean" audit opinion.

8 28. The lack of internal controls materially and substantially led to the failure to detect
9 the misconduct committed by Plaintiffs' former employees. Had the above-described internal
10 controls been in place, Plaintiffs would have detected that certain of its former employees were
11 engaged in self-dealing and conflicts of interest, that certain former employees had an ownership
12 interest in companies that provided materials and services to Plaintiffs, that the terms of some
13 agreements with certain event promoters were more favorable to the event promoters as compared
14 to other event promoters, that certain materials purchased by Plaintiffs were stolen, that 44 events
15 at the Coliseum and Sports Arena from December 31, 2007 through December 31, 2011 involved
16 cash payrolls, that the Association filed incomplete employment tax returns, and that bonuses
17 were issued to employees when Plaintiffs were not in a financial position to issue bonuses.
18 Examples of the misconduct from 2007 into 2011 that SingerLewak failed to identify include, but
19 are not limited to, the following:

20 (a) Payments by promoters of electronic music festivals held at
21 Plaintiffs' facilities to one of Plaintiffs' employees (or to a company he owned or
22 controlled) totaling at least \$1,891,680;

23 (b) Payments by filming and/or production companies that contracted
24 to use Plaintiffs' facilities to one of Plaintiffs' employees (or to a company he owned or
25 controlled) of approximately \$125,000; and

26 (c) Payments by vendors that contracted to sell their products at
27 Plaintiffs' facilities to one of Plaintiffs' employees (or to a company he owned or
28 controlled) of approximately \$120,000.

1 failing to notify Plaintiffs of their lack of internal controls and related deficiencies, Defendants,
2 and each of them, breached the duty of due professional care owed to Plaintiffs. The breach of
3 these duties constitutes negligence.

4 34. As a direct, legal and proximate result of the negligence of the Defendants,
5 Plaintiffs have incurred damages in an amount that will be proved at trial but which is in excess
6 of the jurisdictional minimum of this court.

7 **SECOND CAUSE OF ACTION**

8 **(Gross Negligence)**

9 **(Against Defendant SingerLewak and Does 1 through 100)**

10 35. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
11 through 30 of this Complaint as though set forth in full.

12 36. SingerLewak and Does 1 through 100 each owed Plaintiffs a duty of care, and the
13 duty to competently perform the auditing and accounting services that they were hired by
14 Plaintiffs to perform in accordance with due professional care as set forth in GAAS and as legally
15 required by holding themselves out as certified public accountants.

16 37. The errors and omissions committed by SingerLewak and Does 1 through 100 set
17 forth in this Complaint, including but not limited to: failing to identify the unlawful cash
18 payments that were made to the IATSE shop steward for labor performed by Plaintiffs'
19 employees; effectively protecting corrupt former management employees and complicit, corrupt
20 promoters of events; incorrectly reflecting assets that Plaintiffs no longer owned; improperly
21 accounting for the deferred rent liability of two ground leases; failing to properly book the
22 liability for the retiree medical plan; incorrectly reflecting deposits for which there was no
23 reasonable expectation that they would be realized; and failing to notify Plaintiffs of their lack of
24 internal controls and related deficiencies, constitute a failure to use even slight care and were an
25 extreme departure from the ordinary standard of conduct required of Defendants, and each of
26 them, as Plaintiffs' accountants and auditors. The breach of these duties constitutes gross
27 negligence.

38. As a direct, legal and proximate result of the gross negligence of the Defendants, Plaintiffs have incurred damages in an amount that will be proved at trial but which is in excess of the jurisdictional minimum of this court.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty)

(Against Defendants SingerLewak and Does 1 through 100)

39. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 30 of this Complaint as though set forth in full.

40. Defendants SingerLewak and Does 1 through 100, as Plaintiffs' accountants, owe a fiduciary duty to Plaintiffs. This duty involves acting with the utmost good faith in the best interests of Plaintiffs, with undivided loyalty and allegiance, in the faithful execution of the auditing and accounting services they were hired to perform in accordance with professional standards for certified public accountants.

41. Defendants SingerLewak and Does 1 through 100, breached their fiduciary duty to Plaintiffs when they failed to identify the unlawful cash payments that were made to the IATSE shop steward for labor performed by Plaintiffs' employees; effectively protected corrupt former management employees and complicit, corrupt promoters of events; incorrectly reflected assets that Plaintiffs no longer owned; improperly accounted for the deferred rent liability of two ground leases; failed to properly record the liability for the retiree medical plan; incorrectly reflected deposits for which there was no reasonable expectation that they would be realized; and failed to notify Plaintiffs of their lack of internal controls and related deficiencies.

42. Plaintiffs suffered damages as a result of Defendants' breaches of their fiduciary duty. The damages caused by Defendants' breaches should be awarded to Plaintiffs in an amount according to proof at trial but which is in excess of the jurisdictional minimum of this court.

PRAYER FOR RELIEF

Plaintiffs pray for judgment against Defendants, and each of them, as follows.

1. For Special, General and Consequential Damages according to proof at trial, and which include the following:

1 (a) The approximate \$6.7 million purchase price of the state of the art
2 video scoreboard and related equipment that would not have been purchased but for
3 SingerLewak's failure to identify GAAP errors in Plaintiffs' financial statements.

4 (b) The approximate \$2.2 million misappropriated by one of Plaintiffs'
5 former employees, which would have been avoided but for SingerLewak's failure to
6 communicate to Plaintiffs the lack of internal controls.

7 (c) The combined potential liability to the IATSE-related parties and
8 tax authorities in excess of \$1 million arising out of the cash payments practice that went
9 unidentified by SingerLewak every year from 2007 into 2011.

10 (d) The \$870,000 in deposits paid by Plaintiffs for soccer events that
11 never occurred and would have been avoided but for SingerLewak's failure to
12 communicate to Plaintiffs the lack of internal controls.

13 2. For attorneys' fees and all other costs incurred in preparing to file and prosecuting
14 the action titled *Los Angeles Memorial Coliseum Commission, et al. v. Patrick Thomas Lynch, et*
15 *al.* (Los Angeles Superior Court Case No. BC472814) as well as seeking to resolve actual or
16 potential claims made by the IATSE-related parties and tax authorities based on the Tort of
17 Another Doctrine. Plaintiffs' damages in this regard are currently in excess of \$400,000.00 and
18 continue to accrue because the matters are ongoing;

19 3. For interest at the legal rate on all amounts awarded;

20 4. For the costs of suit incurred herein; and

21 5. For further and other relief as the court deems just and proper.

22
23 Dated: February 14, 2013

BURKE, WILLIAMS & SORENSEN, LLP

24
25 By: Charles E. Slyngstad
Charles E. Slyngstad

26 Attorneys for Plaintiffs
27 LOS ANGELES MEMORIAL COLISEUM COMMISSION &
28 LOS ANGELES MEMORIAL COLISEUM ASSOCIATION